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ABSTRACT

Twenty years ago, home education was treated as a crime in almost every state. Today, it is legal all across America, despite strong and continued opposition from many within the educational establishment. This paper explores the various factors behind its success and resiliency against antagonistic social and political pressures. In the early days of home schooling (circa 1965), there were no support groups or newsletters for parents who taught their children at home; parents were frequently arrested, jailed, or fined until they put their children back in school; and many families were socially stigmatized because of their alternative educational practices. Support grew from conservative religious families who based their home schooling on their faith. When adverse political pressure decreased, families of more diverse backgrounds made their presence and pressure felt at state and federal government levels. Factors such as the Columbine High School shootings, dissatisfaction with public schools, the desire to educate children in a more holistic environment, the success of Catholic and African-American home schools, and the rise of "soccer moms" as important swing voters for politicians contributed to the firm establishment of home schooling, its continuation, and eventual legalization in all 50 states. (Contains 13 references.) (RT)

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The Politics of Survival: Home Schoolers and the Law

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The Politics of Survival: Home Schoolers and the Law

Scott W. Somerville, Esq.[1]

I. Introduction

Twenty years ago, home education was treated as a crime in almost every state. Today, it is legal all across America, despite strong and continued opposition from many within the educational establishment. How did this happen? This paper traces the legal and sociological history of the modern home school movement, and then suggests factors that led to this movement's remarkable success.

II. Why Home Schooling Should Have Failed

A. Limited Resources

Home schooling never should have succeeded in the modern era. It may have been adequate for the agricultural setting of our colonial ancestors, but who would have thought that untrained parents could throw together a homemade curriculum that would actually prepare a child for life in the twenty-first century? In the early days of the modern home schooling movement (c. 1965), there were no support groups or newsletters for parents who taught their children at home. Many parents who taught their children at home never knew that there were any other people doing the same thing. Every family had to invent home education from the ground up. They did not even have a name for what they were doing.

B. Legal Penalties

The school officials had a name for what they were doing, however — criminal truancy. Each time parents pulled a child out of public school, the unexcused absences began to accumulate. Some open-minded school officials were willing to look the other way, but others insisted on enforcing the law. The only safe way to start home schooling was to start before the child reached school age, or to move to a new school district where no one knew the child existed. When parents got caught, they had no legal excuses, no useful precedents, and usually, no money to hire the kind of lawyer who would fight for an unwritten freedom. Parents were arrested, jailed, or fined until they put their children back in school. The only sure way to avoid legal trouble was to hide. This kept the authorities from finding out about home schooling, but it kept everyone else from finding out about it, too.

C. Powerful Opponents

The school officials who prosecuted home schoolers strongly believed that they were protecting innocent children from serious harm. Certified teachers and highly trained school administrators had no reason to believe that parents could cover the basic academic subjects, much less provide the social interactions that were offered in the public schools. To many public school teachers, home education seemed to be child neglect, at best.

The public school officials who were charged with enforcing the truancy laws had every reason to be thorough. Their professional training was founded on the assumption that teaching was not a job for laymen or amateurs. School officials had powerful and selfless reasons to oppose home education. They were not merely motivated by the fact that school budgets were based upon a certain number of dollars for every child in attendance. (In the early days of home

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The author would like to thank Patrick Farenga, President of Holt Associates and Editor of *Growing Without Schooling Magazine*, for his assistance and information on the work of John Holt and the early days of the modern home school movement. Christopher Klicka, Senior Counsel of the Home School Legal Defense Association, graciously gave permission to incorporate substantial amounts of materials he has written for HSLDA.

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education, few school officials ever imagined that home education could ever have a real financial impact on the schools.) But each home schooler did undoubtedly cost the district some small amount in lost revenues. All these factors added up to a solid wall of opposition to home schooling within the public school establishment.

D. Social Disapproval

Home schoolers also faced a wall of opposition from their neighbors. The general public believed that children need a rich set of interactions with other children if they are ever to succeed in later life. Whenever a home schooler tried to explain what he was doing to some other person, he could always count on two questions: Is that *legal*? And what about *socialization*?

There was a deeper sense that home education was somehow un-American. Graduates of the public school system had been consistently taught that public schools bring together rich and poor and male and female to teach children to be true Americans. After the Supreme Court ended legal segregation in *Brown v. Board of Education*, 347 U.S. 483 (1954), the schools finally brought together black and white, and then, with the school prayer cases, even Jews, Catholics and nonbelievers gained equal standing within the schools. Home schoolers seemed to turn their back on the preeminently democratic institution of America.

III. A History of Home Schooling

Home schoolers started out as scattered individuals with little or no resources who faced powerful enemies as they violated the law in a climate of social disapproval. How did these people get from where they were then to where they are now? The history of modern home schooling shows that this journey took wave after wave of different kinds of people educating their children at home for very different reasons. Without this diversity, home schooling would still be a marginal movement.

A. Left-Wing Intellectuals

Growing Without Schooling

Patrick Farenga is the president of Holt Associates and the publisher of the magazine *Growing Without Schooling*. He worked with the late John Holt from 1981 until Holt's death in 1985. Farenga writes:

> The sixties and seventies were times of great ferment for new ideas about education. Some education and social critics, like John Holt, became popular writers by questioning methods of schooling. The battles over look-say reading methods versus phonics, training teachers to be gentle facilitators or drill instructors, whether to encourage hands-on learning or test-taking skills, were well-worn battles to these writers even in the sixties. Many school reformers, such as Herbert Kohl, noted that it is a wide variety of methods, materials, schedules, and techniques that help children learn, and that the teacher should have the freedom to use any combinations of things and ideas to help students. Further, some writers, such as A.S. Neill and Holt, suggested that the student should have complete freedom to choose how, when , and from whom they wanted to learn. In the early sixties, Paul Goodman, in *Compulsory Miseducation* and *Growing Up Absurd*, argued that compelling children to attend school is not the best use of their youth, and that education is more a community function than an institutional one. This idea was developed and amplified over the years by many authors, but most forcefully by John Holt. (Farenga, 1999, p. 34)

John Holt began his career as a fifth grade teacher in a private school. He thought deeply about what worked and what didn't in modern American education, and recorded his observations in *How Children Fail* in 1964. *How Children Learn* soon followed, in 1967. The two books, which are still in print, have sold a total of one and one half million copies and have been translated into 14 languages. Other educational thinkers were working on similar issues during the same time period. According to Farenga, none influenced Holt as much as Ivan Illich, who published *Deschooling Society* in 1971.

> After *Deschooling Society* appeared, Holt studied and corresponded with Illich at length, and was deeply influenced by Illich's analysis, particularly with his analysis that school serves a deep social function by firmly maintaining the status quo of social class for the majority of students. Further, schools view education as a commodity they sell, rather than as a life-long process they can aid, and this, according to Illich, creates a substance that is not equally distributed, is used to judge people unfairly, and—based on their lack of school credentials—prevents people from assuming roles they are otherwise qualified for.
>
> By the late seventies Holt had given up on the possibility that schools would welcome and assist the sorts of changes he and others were suggesting. He sought ways to make these changes as individuals and communities, thus bypassing, rather than confronting, school resistance to these ideas. (Farenga, 1999, p. 35)

Holt's thinking led him to an ever-deeper critique of modern compulsory education. In *Instead of Education*, he wound up suggesting a new "Undergound Railroad" to help children escape from traditional schools. In Holt's own words:

> Some may say that such a railroad would be unfair, since only a few children could get on it. But most slaves could not escape from slavery, either, yet no one suggested or would suggest that because all the slaves could not be freed, none should be. Besides, we have to blaze a new trail if only so that others may follow. The Children's Underground Railroad, like all movements of social protest and change, must begin small: it will grow larger as more children ride it. (Holt, 1976, p. 218)

Instead of Education is one of the landmarks of the modern home school movement. Pat Farenga explains:

> In this book, Holt proposed removing children from school legally or as an act of civil disobedience. While the education establishment barely recognized this particular book of Holt's, it struck a chord with some parents. Some wrote to Holt explaining that they were teaching their children at home legally, others that they were doing so underground. Some were rural families, some city dwellers, others were in communes. Intrigued, Holt corresponded with them all and decided to create a newsletter that would help put these like-minded people in touch with one another. In August of 1977, the first issue of *Growing Without Schooling* (GWS) was published, and the nation's, and probably the world's, first periodical about homeschooling was born. (Farenga, 1999, p. 36)

Growing Without Schooling finally made it possible for like-minded but widely-scattered people to communicate with one another. This included people like Dr. Pat Montgomery, a Catholic educator who had no children of her own but soon became a strong supporter of unschooling. She formed the Home Based Education Program at the Clonlara School in Michigan. Michigan law, at that time, required every child to be taught by a certified teacher, but the law did not specify how much time that teacher had to spend with each child. Clonlara made it possible to comply with the letter of the law while keeping the spirit of unschooling.[2]

B. Organic Education

The unschoolers of the late '60s were as political as their era, but the next wave of home educators had a different set of priorities. The '70s saw the rise of "delayed schooling" as an alternative to "unschooling." Dr. Raymond Moore, the spokesman for this new movement, was more concerned with children's health than social change. His book, *Better Late Than Early* suggested that parents should keep children out of formal education for the first few grades. His research indicated that a healthy child could start formal schooling at fourth grade without any harm.

Dr. Moore's educational and medical conclusions were shaped, to some degree, by religious concerns. Like other Seventh-Day Adventists, Dr. Moore believed that health, nutrition, and exercise are important to a person's overall spiritual well-being. The Moores had taught their own children at home as far back as 1944. This holistic emphasis found ready acceptance within the existing home school community, and soon broadened its appeal to less politically-oriented families. The second wave of modern home education was underway.

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[2] It would be 15 years before the courts finally ruled that Clonlara's program satisfied Michigan law, in *Clonlara, Inc. v. State Bd. of Educ.*, 442 Mich. 230 (Mich. 1993).

Dr. Moore's holistic approach to education made home schooling acceptable to some conservative religious families who would have been repelled by the left-leaning politics of most unschoolers. Dr. Moore began to attract attention in evangelical circles. He appeared on *Focus on the Family*, an evangelical radio show with a huge national audience. Many of the early Christian home schoolers date their exposure to home schooling to that interview, including J. Michael Smith, the current President of the Home School Legal Defense Association.

As a developmental psychologist with extensive experience in traditional education, Dr. Moore soon proved to be a credible expert witness in home school cases. He had been a public school teacher, a principal, a superintendent, a college dean, and a college president. He was a prolific writer and speaker who wrote or contributed to more than 60 books. Dr. Moore's tireless efforts advanced home education far beyond its original left-wing base, and his frequent appearances in court helped the fledgling movement survive. According to Dr. Moore's newsletter, he and his wife interceded with school officials on behalf of hundreds of parents over the years. (Moore, 1986)

C. Evangelical Objectors

One evangelical Christian, in particular, was attracted by Dr. Moore's message on *Focus on the Family*. This was Gregg Harris, who soon took a job working for Dr. Moore. Harris viewed home education as an effective means to a specific religious end. He believed home schooling could lead to a renewal of traditional Christian family living. Harris's desire to present an explicitly Christian message to Christian audiences soon led to tensions with his employer and an eventual split.

Harris began promoting home education to explicitly evangelical audiences through his "Christian Life Workshops." His message came at an opportune time. "The Christian Schools Movement"[3] of the 1970s was running out of churches that were willing and able to start schools, but individual families were still looking for alternatives to the secular public schools. Harris's evangelical message made sense to parents who could not afford or could not find a local Christian school. It energized a new wave of Christian home schoolers who left the schools for religious rather than pedagogical reasons.

Harris's Christian Life Workshops were complemented by a new magazine devoted to evangelical home schooling called *The Teaching Home*, which began publication in 1983. Just as *Growing Without Schooling* had created an unschooling movement, *The Teaching Home* sparked a visible Christian home school movement. The number of home schoolers surged as one church after another discovered home education.

The new wave of evangelical home schoolers created friction with many local school districts. The first wave of unschoolers were convinced that they had a better educational alternative, and many of them were usually willing to work to persuade skeptical school officials that they had a better mousetrap. Open-minded superintendents were usually willing to let them try. The evangelicals had a whole different reason for leaving the public schools. Some rejected public education as "godless" and thought of school officials as secular humanists who were bent on godless mind-control. Parents like these asserted that the Bible required them, not the school system, to raise their own children. They were often not willing to seek "permission" from the schools.

The Christian home schoolers brought new legal problems to the home school movement, but they also brought some Christian attorneys who were willing to dedicate their time to protecting home schoolers. These included Michael P. Farris and J. Michael Smith, who founded the Home School Legal Defense Association (HSLDA) in 1983. Membership in HSLDA was open to any home schooler regardless of religious affiliation or lack thereof, but HSLDA employees were required to sign a Christian statement of faith. Home schooling had become legal for some families in some states; but HSLDA shouldered the task of making home education legal for every family in every state. By 1989, there were only three

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[3] The School Prayer cases of the '60s were initially met with stunned disbelief among believers, followed by "massive resistance" to the secularization of what had traditionally been generically Protestant public schools. At first, Evangelicals just fought to get prayer back in the classrooms. As alienated Evangelicals began to critique the public schools, however, they concluded that the problems went deeper than that. Evangelicals decided that schools were actively promoting an alternative religion that they identified as "secular humanism."
The resulting "Christian Schools Movement" spawned thousands of church schools in the 1970s, often meeting in Sunday School rooms. These church schools routinely operated without State approval, and were the subject of much litigation. Some of the more influential leaders of the Christian Schools Movement became prominent in the Christian home school movement, including Dr. R.J. Rushdoony, a prominent Reconstructionist, and Dr. Paul Lindstrom, the founder of Christian Liberty Academy. The Christian Liberty Academy Satellite Schools program (CLASS) later became an "umbrella school" similar to Clonlara.

states (Michigan, North Dakota, and Iowa) that still outlawed home education. By 1993, home education was legal in all 50 states.

HSLDA was open to all home schoolers, but the rising tide of evangelical home schoolers began to change the face of home education. The original state home school organizations had always been willing to accept any home schooler, regardless of his reason for teaching a child at home. Christian parents who fled the public schools to escape secular humanism were understandably shocked by the lifestyles of some of their fellow home schoolers. As home education began to spread through local churches, explicitly Christian support groups began to spring up at the local level.

In one state after another, Christian home schoolers formed statewide organizations. *The Teaching Home* was a national magazine for Christian home schoolers that "co-published" newsletters for state home school organizations. At first, *The Teaching Home* published anything a state organization put out, but as some of the larger states began to produce rival home school organizations, *The Teaching Home* had to choose which newsletter to publish. This caused friction in states where older organizations that included all home schoolers saw no need for the explicitly Christian start-ups. The new organizations grew quickly, however, and by the early 1990s evangelicals so dominated the visible face of home schooling that many of the original home schoolers feared the movement would be "written off" as a fundamentalist phenomenon.

D. Home Schooling Takes Off

These fears seemed reasonable at the time, but no one imagined how quickly *legal* home education would catch on with the general public. No longer did families need to be compelled by ideological or religious reasons to embark on homeschooling. Once the legal barriers to home education fell, a whole new wave of home schoolers appeared. Soon no informed person could dismiss home schooling as a right-wing reaction to secular humanism.

The Florida Department of Education used to ask parents why they chose to teach their children at home. Religious and or moral concerns were the primary reason for home schooling in Florida until 1993, but "dissatisfaction with public schools" moved into the lead in the 1993-94 school year. Florida discontinued this survey the next year, and no other government agency has been able to gather similar information. (Florida Dept. of Ed., 2001, personal communication)

For the first time, large numbers of families began to choose home education for purely academic reasons. Home education had long been a way to protest the military-industrial establishment, or to seek a more holistic lifestyle, or to flee the secularized schools. These earlier families tended to view home schooling as a moral necessity, rather than a personal choice. With the new legality and social acceptability of home education however, many newer home schoolers viewed it as just one more choice on the academic menu.

There were ample positive academic reasons to consider home schooling, but, in the late 1990s, there were more ominous reasons. A wave of shootings at public school culminated at Columbine High School on April 20, 1999. Many observers thought Columbine would lead to a massive exodus to home schooling. There was some justification for this, at first. A month after the Columbine shootings, the Associated Press reported:

> Educators say more parents are looking into home-schooling in the aftermath of the Columbine High School shootings.
>
> Suzy Parker, program assistant for the Colorado Department of Education, said she has been receiving five calls a day, about twice as many as normal. Many of the calls have come from the Littleton area, she said.
>
> "One woman who lives right near Columbine called me the day of the shooting and told me, 'We're not doing this anymore,'" Parker said last week.
>
> The department reported 68 inquiries from parents on home-schooling in the month since Eric Harris and Dylan Klebold killed 12 students and a teacher before committing suicide.
>
> Christian Home Educators of Colorado, the state's largest advocate organization, has received 400 inquiries since the tragedy, Executive Director Kevin Swanson said.
>
> On average, the organization receives 60 in a month.
>
> ("Columbine spurs interest in home schools," *Associated Press*, May 25, 1999.)

Any expectations that Columbine would be the end of public education died away quickly. A number of people considered home schooling, but most of them abandoned the idea when they realized how much work was really involved. According to the *Rocky Mountain News*, the overall impact on the Denver-area public schools was minimal.

> The deadly shooting rampage at Columbine High School has not sparked an exodus from public schools in favor of home-schooling, Denver-area school officials said.
>
> After an initial flurry of interest in home-schooling in the month after the April 20 tragedy, inquiries have returned almost to normal.
>
> "I don't see a big influx, or any big change from years past," said Sandy Campbell of student information services at Jefferson County Schools. She said she sent many packets in May to parents interested in home-schooling, but got few back.
>
> "I got a lot more phone calls, but they didn't follow through," she said.
>
> ("No rush to home schools in wake of Columbine," *Rocky Mountain News*, Aug. 2, 1999.)

Columbine did not end public education as we know it, but it did have a profound impact on the home school movement. One reason for this is the relative size of the two educational communities. If 50,000 public school students started home schooling because of Columbine, that would be less than one-tenth of one percent of the public school population. A nationwide loss of 50,000 students would hardly even register as a noticeable blip for the public schools, but it would be a huge increase for the relatively small home school movement.

There have been more school shootings since Columbine, and one of the more recent tragedies has a special significance for home schooling parents. One of the two victims at Santee, California, was taught at home for a number of years. According to the New York Post:

> One of the teens slain in the Santee, Calif., rampage had been home-schooled for years because his parents feared public school was unsafe, but they relented when he begged to attend high school with his friends, it was reported today.
>
> Bryan Zuckor, 14, was a freshman at Santana HS despite his parents' misgivings, the Los Angeles Times reports.
>
> The boy was schooled at home for five years, but when he insisted he wanted to go to classes with friends, his parents reluctantly gave in, the newspaper said.
>
> ("Victim's folks feared HS wasn't safe," *New York Post*, March 7, 2001.)

Home schooling parents who have pulled their children out of the public schools are already very cautious about putting them back. Bryan Zuckor's death will make them doubly cautious.

IV. New Home School Strata

Modern home schooling was launched by left-wing intellectuals and legalized by the religious right, but home schooling is not just for the ends of the political spectrum anymore. Home schooling today consists of an ever-more-diverse array of American families. Although there is little in the way of reliable statistical data on the changing face of home schooling, it is not hard to identify several new streams that are flowing into the home school movement. Three of the more significant new layers of home schooling are "soccer moms," Roman Catholics, and African-Americans.

A. "Soccer Moms"

So-called "soccer moms" are suburban mothers of school-aged children. Politicians know these are important "swing voters" who are not locked into either political party. Bill Clinton strategically deployed a number of bite-sized policy initiatives (school uniforms, daytime curfews, etc.) that were designed to win the votes of these mothers. But home schooling is proving to be an even bigger success with these highly motivated mainstream mothers.

Soccer moms are not political radicals. When homeschooling was still a fringe activity, they were not interested. Now that it is acceptable and produces good results, they are willing to try it out. These parents have undoubtedly been influenced by the good press that homeschooling is receiving. Journalists have pumped out a steady stream of articles exploring this intriguing new educational phenomenon, noting the advantages of one-on-one instruction, mastery learning, and parental involvement. When a home schooler won the Scripps-Howard National Spelling Bee in 1997, parents of children in traditional schools began to wonder if their children were really getting the best education possible. By the time home schoolers won first, second, *and* third place in the 2000 Spelling Bee, and the winner also took second place in the National Geographic Bee, the rush was on.

It is still too soon to tell whether the surge in "soccer mom" home schooling will be more than a fad. Suburban schools have a lot going for them, and home schooling is very hard work. It is possible that these new home schoolers will be teaching their children at home for years to come, but it is just as likely that they will return their children to a more traditional setting. But even a brief experience home schooling tends to change people. Charlene Mabie-Gamble writes about one woman's brief experience of home schooling:

> Joshua will be re-enrolling in school next semester. I have chosen not to return him to the same school he left, because I still feel his education is compromised in that setting. We are currently looking into other options. I feel that home schooling is still a valuable way to educate children, but it also takes a commitment that we, unfortunately, were not able to make. I do not regret my decision to home school my son. Though we learned it is not as easy as we had planned, we also learned a lot about each other and ourselves that we could not have known otherwise; if for no other reason, that learning has made this experience worthwhile. After all, not all of life's lessons are learned in school. (Mabie-Gamble, 2001, p. 55)

B. Catholic Home Schools

Roman Catholic families were initially turned off by the common stereotype of white fundamentalism, but home schooling has finally taken root in Catholic circles. Catholic home schooling may be about 15 years behind the evangelical home school movement, but it is gaining ground at extraordinary speed. Four mutually reinforcing factors appear to contribute to the rate of growth in Catholic circles.

First, the more observant Catholics have been quick to notice that evangelical home schoolers put Catholics to shame when it comes to matters of human sexuality. The Catholic teachings that most offend secular America (regarding abortion, contraception, divorce) are enthusiastically practiced by many Protestant home schoolers. Protestant home schoolers are some of the most committed pro-life activists, and can often be found side-by-side with Catholic pro-lifers at crisis pregnancy centers or anti-abortion rallies. Instead of seeing home schoolers as an especially threatening kind of Protestant extremist, the more observant Catholics increasingly view them as kindred spirits.

Second, many parochial schools have lost their Catholic distinctives. This article will not attempt to catalog the many different pressures that affect parochial school systems as they try to serve an increasingly diverse population, but the net result is that traditional Catholics sometimes feel the parochial schools are becoming more and more like the secular public schools. This is particularly true in the sensitive area of sex education. Home education provides Catholic families a way to guarantee a distinctively Catholic education.

The growth of Catholic home schooling has brought this trend to the attention of the Vatican, which has responded favorably. This constitutes a third factor in the explosive growth of Catholic home education, since the most devout Catholic families are usually those who are most influenced by the opinion of the Pope.

Finally, parish priests have begun to notice the distinctive lifestyle of the Catholic home schoolers. When a mother attends daily Mass with all her children, including children of school age, her priest is bound to pay attention. Though there are some exceptions, the reaction to home schoolers at the parish level has been quite positive. This fourth factor also helps spread Catholic home education.

This is not to say that Catholic home schoolers encounter no opposition within their church. They are supported at the highest level of the hierarchy, and are usually encouraged at the parish level, but there is significant resistance to home education at the middle levels of the church structure. In general, parochial school administrators are far from sympathetic to home schooling, and few American bishops are openly supportive of the movement. Home schoolers are a dynamic new

force within American Catholicism, and it is too early to tell whether they will become "mainstream" or "marginal" within that church.

C. African-American Home Schools

It is riskier for African-Americans to start home schooling than it is for other families. Grace Llewellyn is a teacher-turned-unschooler who wrote *The Teenage Liberation Handbook: how to quit school and get a real life and education*. She was surprised by an invitation to talk about it at a public high school. Llewellyn writes:

> The final bell rang, and most of the students hoisted their textbook-filled backpacks and went home. But several stayed and clustered around me, their eyes intense. Among them stood a young man whose voice wavered between resignation and longing. He told me his name was Michael. "I totally see what you're saying about school, how it's a waste of time," he said, "And I know there's a lot more I could learn and do on my own. But I can't do it, because I'm black. I walk into some business to get a job, they want to see my diploma. I tell them I educated myself according to my own interests, and it's over. They say, 'Right. Another dropped out-nigger.'" (Llewellyn, 1996, p. 12)

Yet black families are choosing home education in increasing numbers. Llewellyn suggests several of the reasons why African-American home education is on the rise:

> While I've worked on this book, people have often asked me why black people homeschool. Having only communicated with about twenty families in the process of editing this book, I'm hardly the expert. What I do know is that homeschoolers, in general, are an extremely diverse bunch. People, in general, homeschool so that children can learn more naturally and develop their unique talents. They homeschool to lessen the possibility of children being shot with a gun at school. They homeschool to maintain close family relationships. They homeschool to avoid the brutal school socialization process, which often turns thoughtful, unique children into rude conformists. They homeschool to honor their children's individual learning styles, which are not always compatible with sitting in a desk and shutting up. They homeschool to provide more challenging and thorough academic educations. They homeschool because they are tired of the racist, sexist propaganda that masquerades as truth in history textbooks. They homeschool to break down artificial barriers between life and learning. They homeschool for other reasons too, concerning health, religion, geography, and self-esteem.
>
> As the writers in this book show, African Americans homeschool for all these reasons and then some. Some homeschool because they see that racial integration in the schools has not always worked for their benefit. (Among other things, they feel that it has disrupted community life and thrust children into hate-filled classrooms where few people encourage or hope for their success.) Some homeschool because they see that schools perpetuate institutionalized racism. Some homeschool because they are tired of curricula emphasizing Europe and excluding Africa. Some homeschool because their children are overwhelmingly treated as problems in schools, and quickly labeled Attention Deficit Disordered or Learning Disabled. Some homeschool because black kids drop out of school at much higher rates than white kids. Some homeschool because they want to continue the Civil Rights struggle for equal educational rights, and they feel that they can best do so by reclaiming their right to help their own children develop fully—rather than by working to get them equal access into conventional schooling. (Llewellyn, 1996, pp. 14-15)

Black families have many reasons to consider home schooling, but they face opposition from inside the African-American community. Black grandparents remember all too well what it cost to get their children into the public schools, and they are not eager for those children to pull their grandchildren out.

Despite this, home education is catching on within the black community, and each new African-American home schooler opens the door for many more. As Grace Llewellyn puts it:

> Later I thought back to the conversation, and I wished that I had also been able to say, simply, "Well, Michael, black people homeschool too." But at the time I didn't know whether that was even true.
>
> Now I know that it is true, and that many black people homeschool to save themselves from a system which limits and destroys them, to reclaim their own lives, families, and culture, *to create for themselves something very different from conventional schooling*. I also know that the numbers of these people increase every year, and—especially when I remember my first year of teaching—I hope the numbers will continue to increase, by hundreds and thousands. I remember the horrifying smell of human energy and talent rotting in all schools, any schools, but especially in the mostly black, badly funded schools where I substitute taught in Oakland, California. I remember a Friday when the school secretary told me to plan on coming back Monday because the chemistry teacher liked to take Fridays and Mondays off. I remember walking past vice principals' offices that were bulging with young men who had been kicked out of class. I remember the soft eager eyes of preschoolers and the hard cynical eyes of high school seniors. I remember the principal who introduced me as a long-term sub for a choir teacher, telling the class it didn't matter what they thought of my teaching, the state had given me a certificate (though in English, not music) and that's all they needed to know. (Llewellyn, 1996, pp. 13-14)

If governments don't fix the problems with predominantly black schools, families will. They will pull their children out and teach them at home.

V. Legalizing Home Education

The modern home school movement has many sociological layers, as we have seen. But every stratum of the home school community is subject to the same laws. In this section, we examine the legal developments that took home schooling from an act of civil disobedience to a statutory right.

A. Underground Education

Truancy is a crime in every state, but the truancy laws only work if the government knows that a child is out of school. The home schoolers of the 1960s discovered that it is not all that hard to keep a child out of school and out of court. No one knows how many "underground home schoolers" there were in the late 1960s and early 1970s, but in many states, the only way to home school was to hide. Thousands of families did so successfully.

B. In Search of Freedom

There were a few states where home education was legal. Oklahoma, for example, has a constitutional provision that refers to home education. The Oklahoma Constitution requires the legislature to provide for compulsory attendance at some public or other school, "unless other means of education are provided of all children in the State who are sound in mind and body, between the ages of eight and sixteen, for at least three months each year." The "other means of education" language was added for the specific purpose of protecting the right of parents to choose home schooling. In 1907, during the Oklahoma Constitutional Convention, one of the delegates, Mr. Buchanan, proposed that the phrase "unless other means of education be provided" be added to Article 13, Section 4. Favorably responding to Mr. Buchanan's proposal, another delegate, Mr. Baker stated, "I think Mr. Buchanan has suggested a solution. A man's own experience sometimes will teach him. I have two little fellows that are not attending a public school because it is too far for them to walk and their mother makes them study four hours a day." As a result of this discussion on home schooling, the "other means of education" language was added to Article 13, Section 4.

The Supreme Judicial Court of Massachusetts permitted home education (as opposed to child labor) in *Commonwealth v. Roberts*, 34 NE 402 (Mass. 1893). The court emphasized that the object of the statute is that "all children shall be educated, not that they shall be educated in a particular way."

An Indiana court permitted home schools as far back as 1904 in *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). The court defined a school as "a place where instruction is imparted to the young..... We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or any more a school." (*Peterman*, at 551.) Quoting the *Roberts* decision in Massachusetts, the Indiana court said: "[T]he object and purpose of a compulsory educational law are that all the children shall be educated, not that they shall be educated in any particular way." (*Peterman*, at 551.) The Court concluded; "The result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach. The [compulsory attendance] law was made for the parent who does not educate his child, and not for the parent who ... so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools...." (*Peterman*, at 552.)

The Illinois Supreme Court recognized a right to teach a child at home in 1950 when it decided *People v. Levisen*, 404 Ill. 574, 90 N.E.2d 213 (1950). This landmark case held that a "private school" is "a place where instruction is imparted to the young ... the number of persons being taught does not determine whether a place is a school." (404 Ill. at 576, 90 N.E.2d at 215.) The Illinois Supreme Court emphasized the right of parents to control their children's education: "Compulsory education laws are enacted to enforce the natural obligations of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child. (Meyer v. Nebraska, 262 U.S. 390, 400.) The object is that all shall be educated, not that they shall be educated in any particular manner or place." (Levisen, 404 Ill. at 577, 90 N.E.2d at 215.)

Virginia was a haven for home schoolers after it enacted an exemption from compulsory attendance for conscientious objectors in 1954. There were Amish and Mennonite communities that refused to send their children to the public high schools, so Virginia took the conscientious objector language from the federal draft code and adapted it to the school setting. Virginia Code section 22.1-257(B) requires school boards to exempt from compulsory attendance "any child who, together with his parents, by reason of religious training or belief, is conscientiously opposed to attendance at school." Virginia home schoolers tell the legend of "Mario the Amish Guy," who started off as an unschooler in New York City but then moved to the Shenandoah Valley, put on Amish garb, grew a beard, and successfully claimed Virginia's religious exemption.

C. Early Skirmishes

John Holt was as much of a pioneer in home school law as he was in the field of education. In his book *Teach Your Own*, first published in 1981, Holt told families how to present a legal defense of home education. Holt wrote:

> Most judges in family or juvenile courts, where many unschooling cases will first be heard, probably don't know this part of the law either, since it is not one with which they have had much to do.
>
> This means that when we write up home schooling plans, we are going to have to cite and quote favorable rulings. The more of this we do, the less schools will want to take us to court, and the better the chances that if they do we will win. (Holt, 1981, p. 272)

Holt then spells out a number of early cases that home schoolers could use in their defense in court. (Holt, 1981, pp. 273-294) Most of these were trial court decisions, which never appear in any published legal reporting service. Holt cites *State of Iowa v. Sessions*, (Winniesheek County District Court, 1978); *Commonwealth of Virginia v. Geisy* (Norfolk Juvenile and Domestic Relations Court, 1979); and *Michigan v. Nobel* (57th Dist. Ct., Allegan County, Mich. 1979). The early issues of *Growing Without Schooling* were filled with citations of trial court rulings home schoolers had won. These cases gave parents confidence and helped the home school movement grow.

The first significant reported[4] case of the modern home school movement came in New Jersey. According to New Jersey law, a child must attend a public school "or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades ... or receive equivalent instruction elsewhere than at school." Home schoolers argued that they satisfied the "elsewhere than at school" portion of the statute in *State v. Massa*, 95 N.J. Super. 382, 231 A.2d 252 (Morris County Ct. Law Div. 1967).

[4] "Reported cases" set forth principles of law that can be cited in other legal proceedings, while unreported cases generally do not. When a home school family is acquitted in a criminal trial, that ruling is *not* reported and is *not* generally relevant in other cases. When a family loses in criminal court, appeals that loss, and wins at the appellate level, the appellate decision announces a principle of law that can be cited in other cases.

The *Massa* court agreed. "This court agrees with the above decisions that the number of students does not determine a school and further, that a certain number of students need not be present to attain an equivalent education." (*Massa* at 256.) The court reiterated *Roberts*, emphasizing that the object of the statute is that "all children shall be educated, not that they shall be educated in a particular way." (*Id.*)

D. The Absent ACLU

Home schoolers did win some cases, but it was hard to find a lawyer who knew anything about home schooling except that it was illegal. As John Holt wrote:

> For some time, we unschoolers are not likely to find many lawyers, anywhere in the country, who know as much about the law on unschooling as we know *or can easily find out*. This is not an issue about which most lawyers have concerned themselves. We cannot rely on them to work out good strategies and write good briefs for us—at least, not at a price that most of us can afford. We are going to have to do much of the research, decide what legal action we want to take, what kind of decision we hope to get from the courts, and put together all our necessary supporting evidence, citations, quotes from rulings, etc. Only after we have prepared the strongest possible case should we think about hiring a lawyer to polish it for us and steer it through the courts. (Holt, 1976, p. 297)

Holt was writing about filing suit against a local school district, which gave a family a choice between going to court or not going to court. Families did not have the luxury of such a choice when they found themselves defending against criminal charges. In those cases, they needed a good lawyer and they needed one fast.

Many of the early home schoolers were well to the left of the political spectrum, and some assumed the American Civil Liberties Union would rise to defend them.[5] They were sadly mistaken. The ACLU's absence was a critical but often overlooked factor in shaping the subsequent development of home school politics.

The ACLU's absence was not for lack of trying. John Holt wrote the national director of the ACLU, Aryeh Neier, to persuade him to support home schoolers. Holt published that letter in an early issue of *Growing Without Schooling*:

> Dear Mr. Neier—Thanks very much for your kind invitation to take part in your National Convocation on Free Speech on June 13....
>
> I think that compulsory attendance laws, in and of themselves, constitute a very serious infringement of the civil liberties of children and their parents. This would be true, I feel, no matter what schools were like, how they were organized, or how they treated children, in short, even if they were far more humane and effective than they actually are.
>
> Beyond that, there are a number of practices, by now very common in schools all over the country, which in and of themselves seriously violate the civil liberties of children, including ... [Holt goes on to list ten common practices in the public schools. Some of these have since been prohibited by case law or statute, others remain common to this day].
>
> ... As long as such outrages go on, I can't get very excited about such issues as the controlling of violence and sex on TV, the rating of motion pictures, the censorship of student publications, or the banning of textbooks and library books on various grounds. People who argue strongly about such things, while accepting without protest the practices I here complain about, seem to me to be straining at gnats while swallowing camels....
>
> To return once more to the matter of compulsory school attendance in its barest form, I think you will agree that if the government told you that on 180 days of the year, for six or more hours a day, you had to be at a particular place, and there do whatever people told you to do, you would feel that this was a gross violation of your civil liberties. The

[5] Holt was experienced enough to realize this was unlikely. He recognized that the ACLU was unlikely to oppose compulsory schooling on constitutional grounds. (Holt, 1976, p. 310)

> State justifies doing this to children as a matter of public policy, saying that this is the only way to get them educated. Even if it were true that children were learning important things in schools, and even if it were true that they could not learn them anywhere else (neither of which I believe), I would still insist that since in other (and often more difficult) cases the ACLU does not allow the needs of public policy as an excuse for violating the basic liberties of citizens, it ought not to in this case. (Holt, 1978, p. 44)

It is not easy to explain why the ACLU chose to stay out of home school cases. After all, the strongest precedent for a right to teach a child at home is *Roe v. Wade*. Roe's right to abortion is explicitly grounded in a fundamental right to "bear and raise children," and this right was first recognized by the Supreme Court in *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), a 1925 case which upheld a parent's right to keep a child out of public schools.

If the ACLU had accepted home school cases, it is safe to assume that they would have tried to extend the privacy rights of *Roe* to include home education. After all, if the constitutional right to "bear or raise children" is important enough to allow a woman to terminate a pregnancy even though many Americans view that act as murder, it ought to be important enough to allow a parent to give a child an alternative form of education.[9]

The ACLU's absence is hard to explain. There is no evidence that the national organization made any top down policy decision to avoid home school cases. There was one successful New Hampshire Civil Liberties Union case, *Appeal of Peirce*, 122 N.H. 762 (1982), but a computer database search reveals no other reported case in which the ACLU or any of its state affiliates supported the right to home school. For some reason, however, the organization as a whole seemed uninterested in winning this kind of case.

E. Void for Vagueness

The early home school cases were generally won using the kind of arguments the ACLU has perfected. The single most successful argument in the early years was the "void for vagueness" defense that the ACLU has used so successfully as a defense to obscenity or loitering laws.

In states where the compulsory attendance law required attendance at a public school or "equivalent instruction elsewhere," home schoolers argued that their homes were equivalent. The earliest case on this point took place in New Jersey. In 1965, the New Jersey Supreme Court ruled that a home school might be able to provide equivalent instruction. (*State v. Vaughn*, 44 N.J. 142 (1965).) Public school officials insisted that "equivalent instruction" would have to include more than just equivalent academics. The school establishment insisted upon equivalent social interaction, too. When a home school family was prosecuted for lack of socialization, however, the court sided with the home schoolers.)*Massa, supra.*)

In states where the compulsory attendance law required attendance at a "private school," home schoolers argued that their home was a private school. In some states, the courts promptly rejected this claim. In others, the judges gave home schoolers the benefit of the doubt.

In *Roemhild v. Georgia* (251 Ga. 569, 308 S.E.2d 154 (Ga. 1983)), the Georgia Supreme Court declared Georgia's compulsory attendance law "unconstitutionally vague." (*Roemhild*, 308 S.E. 2d at 159.) The court reasoned: "...we conclude that the statute is not sufficiently definite to provide a person of ordinary intelligence, who desires to avoid its penalties, fair notice of what constitutes a "private school...." (*Roemhild* at 158.) "Furthermore, the statute violated a second due process value in that it impermissibly delegates to local law enforcement officials, judges, and juries the policy decision of what constitutes a private school." (Id.)

In *Wisconsin v. Popanz* (112 Wis. 2d 166, 332 N.W.2d 750 (Wis. 1983)), the Wisconsin Supreme Court held that the compulsory attendance law was "void for vagueness insofar as it fails to define private school." (Popanz, 332 N.W. 2d at 756.) The Court explained: "The persons who must obey the law should not have to guess at what the phrase 'private school' means. They should have some objective standards to guide them in their attempts to 'steer between lawful and unlawful conduct.' (*Grayned v. City of Rockford*, 408 U.S. 104 (1972).) Furthermore, standards cannot lie only in the minds of persons

[9] It is interesting to speculate how the home school movement would have been different if the right to home school had been successfully built upon an abortion-rights foundation. It seems safe to assume that the "religious right" would view home schoolers with suspicion, if not overt hostility. If the ACLU had defended home schooling, Christian home schoolers would probably find themselves in the same uncomfortable shoes that left-leaning home schoolers find themselves in today.

whose duty it is to enforce the laws. We must conclude that statute fails to provide fair notice to those who would seek to obey it and also lacks sufficient standards for proper enforcement." (*Popanz*, at 756.)

The Minnesota Supreme Court ruled that Minnesota's requirement that private and home school teachers have qualifications "essentially equivalent" to public school teachers was too vague to "serve as a basis for criminal conviction," and therefore, was an unconstitutional violation of due process under the 14th Amendment. (*Newstrom v. State*, 371 N.W.2d 525, 533 (Minn. 1985).)

These early cases created a new opportunity for home schoolers to thrive in those states and in others that had vague, old-fashioned laws.

F. Looking for Loopholes

Not all states had vague laws, however. Some permitted education in the home as long as the local public school district "approved" the instruction in advance. Many early home schoolers managed to get approval from open-minded school officials, but far more were rebuffed. School officials who refused to approve a home school program tended to prosecute parents who went ahead and taught their children at home without permission.

Local home school groups began to learn which school districts were receptive to home education and which were not. A patchwork approach to home education began to develop, where local home school leaders learned how to negotiate approval out of local public school officials. In hostile districts, home schoolers learned how to hide or made plans to move.

Approval in advance by local school officials worked reasonably well for some home schoolers in some school districts, but it was completely unacceptable for a brand-new national organization that was committed to defending every home schooler in every school district, including those who had strong religious objections to asking "Caesar" for permission to teach Christian values to their own children. The Home School Legal Defense Association (HSLDA) was formed in 1983 with just that mission.

If HSLDA had started off with big budgets and high-powered lawyers, it probably would not have tackled this problem as it did. But HSLDA started off as a cardboard box full of membership applications under Mike Farris's bed. HSLDA's first full-time employee was Chris Klicka, then a law student at Oral Roberts Law School. Klicka had spent a summer at the Rutherford Institute researching the compulsory attendance laws in all 50 states. When he started work at HSLDA, he set in finding every loophole in every law.

There were plenty of loopholes to find. There was some way to get away with home schooling in the majority of states by 1983, although the vast majority of school district superintendents still assumed they had the power to prosecute home schoolers if they refused to cooperate with the school system. HSLDA tended to attract the families who were least willing to cooperate, and the legal battles began in earnest.

Klicka sat down to write the book on home school law. *Home Schooling in America: A Legal Analysis*, has since become the definitive statement on home education in America,[7] not so much because Klicka's interpretation of the law was widely accepted by local school officials or state departments of education, but because HSLDA settled down to the long, slow process of systematically insisting upon their interpretation of the law in every single interaction with school districts.

Home schooling was so new that local school districts rarely had any official guidance from above on how to handle it. Each school official had to invent the wheel all over again. This placed school officials at a systematic disadvantage in dealing with home schoolers, because HSLDA lawyers knew all the statutes, regulations, policies, and precedents that justified home education. HSLDA made no secret of its willingness to go to court to defend its understanding of the law. In the face of HSLDA's extensive knowledge and single-minded purpose, most districts looked for ways to tolerate home schoolers instead of prosecuting them

G. Constitutional Challenges

There were a few states, however, where there was strong leadership from above. In Texas, for example, the Texas Education Agency instructed school officials that home education was not legal and that home schoolers should be prosecuted if they would not put their children into traditional schools. HSLDA members in Texas joined a class action suit to block this prosecution. Home schoolers argued that Texas was discriminating against parents by permitting any private school to operate except a private school operated by parents. The trial court agreed that this was enough of a possibility that

[7] Significant portions of this paper have been taken directly from Klicka's work with his kind permission.

criminal charges against home schoolers should be enjoined until a final determination of that question could be made. *Leeper v. Arlington Indep. School Dist.*, No. 17-88761-85 (Tarrant County 17th Judicial Ct., Apr. 13 1987).[8] Home schoolers in Texas were suddenly free from the threat of prosecution.

The *Leeper* decision was HSLDA's first big win as a plaintiff in a case. Over the next few years, HSLDA lawyers filed a series of broad constitutional challenges for HLSDA members in other states where home schoolers were under attack.

Pennsylvania and New York each had an "approval" law that meant that home schoolers could not operate without individualized approval by their local school superintendent. In each state, scores of HSLDA members were in court. HSLDA filed *Jeffery v. O'Donnell* (702 F.Supp. 516 (M.D. Pa. 1988)) in Pennsylvania and *Blackwelder v. Safnauer* (689 F. Supp. 106 (N.D.N.Y. 1986)) in New York.

The two cases made essentially identical federal claims about essentially identical state laws on essentially identical facts. The two courts came to opposite conclusions. The *Jeffery* court struck down Pennsylvania's compulsory attendance law. The *Blackwelder* court upheld New York's.

H. Legislative Victories

The loss in New York did not make a big difference to home schoolers in that state. On the same day that *Blackwelder* was decided against them, the New York Board of Regents issued regulations legalizing and regulating home education. The Pennsylvania Legislature did much the same when it passed a new compulsory attendance law that permitted home education under certain conditions.

By 1987, home schoolers had achieved enough legitimacy that lawmakers were finally willing to consider permitting home education, subject to certain regulations. In general, legislators were willing to allow parents to teach their own children as long as they provided an annual notice of their intent to teach a child at home and submitted evidence of academic achievement at the end of the school year. The following states adopted home school statutes or regulations:

1982: Arizona, Mississippi
1983: Wisconsin, Montana
1984: Georgia, Lousiana, Rhode Island, Virginia
1985: Arkansas, Florida, New Mexico, Oregon, Tennessee, Washington, Wyoming
1986: Missouri
1987: Maryland, Minnesota, Vermont, West Virginia
1988: Colorado, New York, South Carolina, North Carolina, Pennsylvania
1989: North Dakota, Hawaii, Maine, Ohio
1990: New Hampshire, Connecticut
1991: Iowa

By 1989, there were only three states where home education was still a crime. Iowa, North Dakota, and Michigan were the last home school holdouts. The North Dakota Supreme Court ruled against home schoolers seven times before 1989, when the "Bismarck Tea Party" persuaded the legislature to change the law.

Home schooling was still illegal in Iowa, thanks in large part to Kathy Collins, the attorney who used to handle home education issues for the Iowa Department of Education. In 1987, Attorney Collins wrote:

> Children are not chattel; they are not personal property. They are not "owned" by their parents, nor do they "belong" to the state. The Christian fundamentalists who want the freedom to indoctrinate their children with religious education do not understand that the law that prevents them from legally teaching their kids prevents someone else from abusing theirs.
>
> Compulsory attendance laws are protectionist in nature. Their purpose is twofold: to protect the state by ensuring a properly educated citizenry; to protect the children by ensuring that their labor is spent attaining an education. Any law that would allow

[8] The trial court blocked any further prosecutions while the case worked its way through the court system. It took seven more years before the Texas Supreme Court ultimately upheld this decision in *Texas Educational Agency, et al., v. Leeper, et al.*, 893 S.W.2d 432, (Tex. 1994).

> Christians to teach their children without oversight or interference from the state would also allow parents with less worthy motives to lock their children in a closet, use them to babysit for younger siblings, or have them work twelve hours a day in the family hardware store. Opening the door for the lamb allows the lion to enter as well....
>
> It has taken nearly two centuries to enact the many legal protections existing today for children. Abrogating the state's compulsory-attendance laws, or weakening them by allowing parents to teach children at home, is no less than a giant genuflection backward. The precarious balance of parents' rights versus children's rights should never be struck in favor of the parents. While the Religious Right carries the Christian flag into battle, the state must steadfastly hold high the banner of the child. (Collins, 1987, p. 11)

Despite Collins' very best efforts, the Iowa Legislature finally passed a home school law in 1991. That left Michigan as the very last state to prohibit home education by anyone but a certified teacher. The DeJonge family had spent eight years in court, and had lost every single hearing before they reached the Michigan Supreme Court. By a 5-4 decision, that court held that the Michigan compulsory attendance law violated the rights of parents who had a sincere religious objection to using certified teachers. (*People v. DeJonge*, 442 Mich. 266 (1993).) In a companion case, the court ruled in favor of the Clonlara School, which used certified teachers as required by law, but only for a few hours each school year. The rest of the instruction was provided by parents. (*Clonlara, Inc. v. State Bd. of Educ.*, 442 Mich. 230 (1993).)

These two cases effectively eliminated Michigan's ability to prosecute home schoolers, but not their power to try. Two and a half years later, the legislature enacted a home education law that eliminated all notice and reporting requirements.[9] The battle for Michigan was finally over.

VI. Holding Ground

By the middle of 1993, home schooling was finally legal in all 50 states. The challenge for the home schooling movement shifted from making home education possible to keeping it free. This proved to be as big a task as ever.

A. The National Education Association

Home schoolers have not yet won over all their opponents. The National Education Association, in particular, has voted to abolish home education every year since 1988:

> The National Education Association believes that home schooling programs cannot provide the student with a comprehensive education experience. When home schooling occurs, students enrolled must meet all state requirements. Home schooling should be limited to the children of the immediate family, with all expenses being borne by the parents/guardians. Instruction should be by persons who are licensed by the appropriate state education licensure agency, and a curriculum approved by the state department of education should be used.
>
> The Association also believes that home-schooled students should not participate in any extracurricular activities in the public schools.
>
> The Association further believes that local public school systems should have the authority to determine grade placement and/or credits earned toward graduation for students entering or re-entering the public school setting. (1988, 2000) (National Education Association, 2000)

[9] Michigan Compiled Laws § 380.1561(3)(f) exempts a child from attendance at a public school if the child is being educated at the child's home by his or her parent or legal guardian in an organized educational program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing, and English grammar. There are no reporting or notification requirements.

B. H.R. 6

Given the National Education Association's stated position and that union's influence within the Democratic Party, many home schoolers had reason to fear the election of Bill Clinton as President in 1992. The home school movement had abolished the last significant barrier to home education at the state level, but now they faced Democrat majorities in the House of Representatives, Senate, and White House. Would the Clinton Administration support home education? The first big test came with House Resolution 6 of 1994.[10]

H.R. 6 was a reappropriations bill for the Elementary and Secondary Education Act (ESEA). Ordinarily such bills deal with public education and would have little, if any, impact on home educators. But in 1994, a few small wording changes affected thousands upon thousands of home schooling families, and resulted in over a million phone calls to Congress.

The Miller Amendment

Just before sending H.R. 6 back to the House floor, the Education and Labor Committee approved Congressman George Miller's amendment (Section 2124(e)). His amendment stated:

> ASSURANCE.—Each State applying for funds under this title shall provide the Secretary with the assurance that after July 1, 1998, it will require each local educational agency within the State to certify that each full time teacher in schools under the jurisdiction of the agency is certified to teach in the subject area to which he or she is assigned.

Many local school authorities believe that home and private schools are under their jurisdiction, so home schoolers were concerned. The new definition of schools in H.R. 6 made the Miller amendment unacceptably threatening. The word "nonprofit" had been added to the definition of schools in H.R. 6, changing the definition for the first time since ESEA was enacted in 1965. Where the word had previously been understood to refer to public schools, it now clearly meant more.

Rep. Armey Offers an Amendment

Concerned by the implications of the Miller amendment and new definitions of "school" in H.R. 6, Representative Dick Armey (R-TX) offered his own amendment to protect home and private schools from the certification requirement: "Nothing in this title shall be construed to authorize or encourage Federal control over the curriculum or practices of any private, religious, or home school."

Armey's amendment was rejected in the committee on February 14, 1994 on a straight party-line vote in the Democratic-controlled House Education Committee. Armey's office called then HSLDA President Mike Farris and asked him to analyze the Miller amendment. Based upon review of Miller's amendment, the definitional language, and HSLDA's 11 years of defending home schools against legal challenges from local education agencies, Farris felt it was imperative to add protective language to the bill.

Rep. Miller Refuses to Negotiate

HSLDA immediately contacted Representative Miller's office to express concern and ask for clarifying language, which is the normal way of handling such situations. Unfortunately, Miller's staff refused to consider any amendments to § 2124(e). A quick review of Rep. Miller's voting record showed that he was a staunch supporter of the National Education Association, which had never been favorable to home schoolers. With the rejection of Rep. Armey's amendment, the refusal to negotiate with home schoolers, and a vote only nine days away, HSLDA began contacting its members.

On Tuesday, February 15, 1994, HSLDA staff began preparing for the battle. President Mike Farris drafted a letter to all 435 members of Congress, explaining the threat to home schooling and asking them to support the Armey amendment. Next, arrangements were made for printing, collating, and labeling an "urgent alert" letter from Farris to HSLDA's then 38,000 members.[11] The letter summarized the situation and outlined a six-step plan of action for contacting Congress and

[10] The material in this section has been adapted by permission from material on the Home School Legal Defense Association web page, at www. HSLDA.org.

[11] HSLDA now has over 70,000 member families.

spreading the alert to friends and neighbors. Also contained in the mailing was a list of the representatives whose offices did not need to be contacted because they had already assured HSLDA of their support for protective language.

That evening, the National Center for Home Education launched a nationwide fax alert containing the same information to home school leaders around the country.

Twelve hours later, on Wednesday morning, telephone trees across America were abuzz thanks to the efforts of state and support group leaders. Tens of thousands of copies of the fax alert were photocopied and distributed. Christian television and radio shows picked up the alert. CBN's television program *The 700 Club* and Marlin Maddoux's nationally-syndicated radio show *Point of View* featured Mike Farris telling the story of H.R. 6.

Congressional Phone Lines Overloaded

On Thursday, February 17, more than 60 local home schoolers volunteered to participate in an emergency lobbying effort. Congressional switchboards became so overloaded due to the amount of incoming calls that they literally shut down. Besieged by over 20,000 telephone calls to his office alone, Congressman Miller's staff finally put an answering machine on with a message claiming that he had no intent to regulate home schoolers.

By 9:00 a.m. the following morning, the Capitol Hill switchboards were again jammed as tens of thousands of calls flooded congressional offices. Across America, home schoolers called radio stations, faxed letters, and distributed literature on the Rep. Armey's "Home School/Private School Freedom Amendment." When the receptionists for certain congressmen began giving false information about H.R. 6 to callers, the National Center sent another fax broadcast to help home schoolers respond to confusing and misleading statements about the bill.

Over the weekend, dozens of congressmen visiting their districts for the President's Day recess were confronted at town hall meetings, in their home offices, and elsewhere by concerned parents. Congressman were shocked by the populist response to what many of them believed to be an insignificant provision in a non-controversial bill. Even the Associated Press ran a favorable nationally-syndicated story about the home school telephone blitz of Congress.

Little did Congress know that the battle had just begun. On Monday, February 21 (President's Day), Dr. James Dobson's *Focus on the Family* radio show featured Michael Farris and former Congressman Bob McEwen discussing the implications of H.R. 6. HSLDA's membership began receiving their urgent alert letters in the mail. Several Christian school organizations actively jumped on the H.R. 6 bandwagon, sending out their own mailings and fax alerts. Rush Limbaugh discussed H.R 6 on his radio show. Capitol Hill switchboards again closed down as record-breaking numbers of telephone calls poured into Congress.

On Tuesday, February 22, the second wave of telephone calls hit Congress in full force. For the rest of the day, no one on Capitol Hill would get anything done. Several congressmen could not even reach their own staff by telephone. Congressman Armey and Mike Farris continued to fight misinformation about the amendment on the Hill. HSLDA's own office received a record 10,000 incoming telephone calls.

Braving an ice storm early the next morning, Mike Farris and home schoolers from as far away as Missouri made it into D.C. to lobby Congress. Local home school volunteers delivered another letter from Mike Farris to each congressional office. Attached to this letter was a list of thousands of state and local home school organizations from around the country who officially supported the effort to advance the "Home School/Private School Freedom Amendment." Later that day, Farris was interviewed on H.R. 6 by more national media including CNN, Pat Buchanan, and Beverly LaHaye. And, amazingly, the Democrat-controlled House Rules Committee, willing to do almost anything to stop the mounting tide of phone calls, agreed to "open rule" on the floor.

On Thursday, February 24, Armey's staff discovered that the Rules Committee inadvertently reprinted an outdated version of the "Home School/Private School Amendment." HSLDA asked Massachusetts home school leaders Bev Somogie and Marcie Arnett to alert home schoolers in the district of Rules Committee Chairman Joseph Moakley (D). Within the hour, Rep. Moakley's office was flooded with calls and he agreed to allow Armey to revise the amendment on the floor. Senators Ford and Kildee sponsored an ineffective competing amendment and circulated letters undermining the "Home School/Private School Amendment." Armey responded with his own letter, refuting Ford and Kildee's charges.
Finally, on Thursday afternoon, debate began on the two amendments. The Ford/Kildee amendment came to a vote and passed 424-1. Representative Miller was the only member to vote for it. Then Armey submitted his revised amendment. Home schoolers around the country watched C-Span with bated breath as congressmen from both parties lined up four and five deep to publicly state their support for the cause of home educators. After an hour-and-a-half of debate, the House voted

on the Armey amendment, and home schoolers won a stunning 374-53 victory! HSLDA sent out fax number five announcing the victory to the home school community.

One week later, DC-area home school families delivered a special 10-pound bag of apples and a note of thanks to each congressional office. Home schoolers all over the country expressed their appreciation by sending flowers to their congressman.

HSLDA's all-out assault on H.R. 6 had an undeniable political impact, but it did not make every home schooler happy. Some were willing to give Rep. Miller the benefit of the doubt, others felt that the Armey Amendment had the potential to federalize home education instead of keeping the federal government out of it. Such home schoolers eventually founded the National Home Education Network[12] to counter the growing impression that HSLDA was the only group speaking for home schoolers.

C. National Testing

Home schoolers recognize how fragile their liberty is, and are committed to defending that liberty at all costs. Chris Klicka of HSLDA provides the following first-hand account of one of the more recent political battles for liberty:

> During the 105th Congress, I obtained a transcript of a meeting the U.S. Department of Education convened with educators from around the country to discuss the creation and implementation of a national test for all students. A university professor from Kansas, John Poggio, made a startling but obvious statement. He warned, "What gets tested, must be taught." A member of the Delaware Board of Education echoed a similar sentiment. She explained that Delaware would have to adjust its curriculum to fit the national test. The danger was clear. If Clinton was able to create and implement a national test, it would, by default, create a national curriculum. The federal education bureaucracy in Washington, D.C., would control the education of our nation's youth in a more profound degree than ever before. We had to fight this test. But how?
>
> After meeting with the president of HSLDA, Mike Farris, who agreed battling this national test would be a major priority for us, I contacted Congressman Goodling's counsel [Bill Goodling was the Chairman of the House Education Committee] and told him that Mike Farris agreed we would "pull out all stops" if Goodling introduced a bill to cut off funding to Clinton's national test. The counsel said he would talk to Goodling. A week later, he explained Goodling was willing to introduce a resolution expressing the sense of the House opposing national testing. I told him there was no way we could get home schoolers to flood the Congress with calls over a resolution which had no power to stop testing. I asked him to go back to Goodling and explain we could not help him unless he introduced a bill to permanently ban testing. I emphasized, then and only then, could we deliver calls. A week later Goodling agreed!
>
> Over the next year and a half, the home schoolers had the opportunity to prove themselves again and again as HSLDA sent out nearly 35 nationwide fax alerts. And the home schoolers responded! Repeatedly the home schoolers flooded the House with calls and we organized our Congressional Action program volunteers to visit every office with packets exposing the dangers of the Clinton national test. In September of 1997, we won the first round in the House: 296 to 125 to stop funding of all national testing. The home schoolers had made the ban on testing viable. A key congressional staff admitted, "Without HSLDA and the home schoolers this could not have happened!"

[12] NHEN can be found on the web at www.nhen.org. Its mission statement reads:

> The National Home Education Network exists to encourage and facilitate the vital grassroots work of state and local homeschooling groups and individuals by providing information, fostering networking and promoting public relations on a national level. Because we believe there is strength in a diverse network of homeschoolers, we support the freedom of all individual families to choose home education and to direct such education.

In October 1997, the Senate sold us out by compromising the bill and allowing a national test. This was unacceptable. We told the leadership we would unleash another nationwide alert. In high stakes negotiating in conference committee, we achieved a temporary victory. We won a **one-year ban** on national testing. This meant the fight would continue in 1998. We hoped the grassroots would not become worn out.

At the beginning of the next year, our champion, Congressman Goodling, introduced H.R. 2846, a **permanent ban on national testing.** Riding on a wave of calls from the home schoolers, the testing ban passed in a vote of 242 to 174. The fight, however, was just beginning. We still had to get the bill through the Senate. Our champion in the Senate was John Ashcroft from Missouri. The only problem is that we did not have a "vehicle" to which to attach our testing amendment.

Meanwhile, I attended a meeting with Senator Coverdell's chief of staff where he was recruiting support for the Senator's "A+ Education Savings Accounts" bill. I told him we could not deliver calls unless something was attached which would really motivate home schoolers to call. . . something like our prohibition on a national test amendment.

A few days later, I received a call from Coverdell's office that they would allow the testing amendment to be attached. The rules, however, required that a separate vote be taken on our amendment. We scheduled a lobby day and set appointments with a majority of senators while simultaneously sending out a nationwide alert to home schoolers to call their two U.S. Senators.

I soon received a call from Senator Lott's office, who was the majority leader, telling me there was "not a chance in -------" that our testing amendment would be successful. They had done a "whip count" earlier in the day and only found 30 senators who would support our testing ban. They urged us not to push for the amendment because we would lose big. Our lobby effort the day before, however, gave us evidence that we were very close to winning the vote. Lott's office told me it was our call. I said we wanted to go forward with the vote. I thought we could win. Besides, it might be our only chance to get a vote that year. In the meantime, the home schoolers were delivering thousands of calls and God's people were praying.

On April 22, 1998, the vote was scheduled. It was amazing to watch. Ashcroft's amendment permanently banning national testing passed in a vote of 52-47! Far more votes than the 30 votes predicted by Lott's office. The Senate leadership was amazed. The home schoolers had pulled it off.

Later in June, we were contacted by the leadership in both the House and Senate, asking us if we would agree to have our testing amendment removed so that the "A+ Education Savings Account" bill could go the president in a "clean" form. (The "A+" bill was subsequently vetoed by the president.) We made Speaker Gingrich and Majority Leader Lott promise, in writing, that our testing amendment would be attached to another bill later in the year. In October 1998, they kept their promise in spite of intense threats from President Clinton. We finally won. A permanent ban on a national test was achieved! (Klicka, personal communication.)

VII. Home School Politics

The preceding sections describe a surprisingly successful movement. In this section, we will grope for some explanation of the secrets of that success. How did this small group of ragtag radicals become the largest successful educational reform movement in America today? How did they change the laws of all 50 states and enact federal legislation over President Clinton's objections? Three factors seem to make the difference.

A. Right Makes Might

According to the "social contract" theories that led to the American Revolution, governments exist to serve certain purposes, and when the government undermines those purposes instead of serving them, the people have the right (perhaps even the duty) to rebel. Most home schoolers believe that governments should protect the safety and integrity of the home and leave the task of childrearing to parents. When parents believe their government threatens their home instead of protecting it, they feel justified in resisting that threat. Laws fade into insignificance when a parent thinks the government threatens the good of his or her children.

This touches on profound issues of political philosophy that need not be resolved for the purposes of this essay. We need not determine whether parents actually have a right to break a law that threatens their home, although such questions have begun to reach the highest courts in our land. (See, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000).) It is enough for us to examine what happens when large numbers of parents *believe* they have a right to go against the law. Home schoolers believe they do have a right to do what is best for their own children in their own homes, whatever the law may say.

A mother's love is an irresistible force, and the compulsory attendance laws are hardly an immovable object. When nineteenth century parents claimed a right to force their children to work in the potato fields instead of sending them to school, it was easy for society to insist that a child's right to an education outweighed the parent's right to the child's income. But when twentieth century parents claimed a right to give their children a better education than that in the public schools, society lost its will to resist.

Home schoolers have gone forth on the courage of their convictions, and the opposing forces of government have melted away at their advance. Time after time, a home school mom with a cardboard box full of books has marched into a superintendent's office to say, "I don't care what the law says. This is what my child needs!" Time after time, the schools have found a way to work around the law, or, if the case goes to court, the judge has found the way, or, if the case is lost, the legislature finds the way, or, if the legislature refuses to act, the family moves on to another state. Good parents don't give up until they have what is best for their children, and home schoolers believe home schooling is best for theirs.

B. Active Citizens[13]

In the 1996 National Household Education Survey (NHES), the U.S. Department of Education's National Center for Education Statistics surveyed 9,393 parents of school age children. The survey asked numerous questions about the extent of family involvement in a variety of civic activities. Some of the questions asked whether the parent had voted recently, telephoned or wrote a public official, signed a petition, attended public meetings, contributed to political campaigns, participated in community service activities, worked for a political cause, or participated in a boycott in the past twelve months. The survey differentiated public schoolers from home schoolers and both religious and non-religious private schoolers. Christian Smith and David Sikkink of the Department of Sociology at the University of North Carolina analyzed the data, which was published in 1999.

By comparing differences in family participation in these various forms of civic involvement, Smith and Sikkink found that home school families and private school families are consistently **more involved** in all of the civic activities examined than are families with children in public schools. In fact, by an average margin of 9.3%, the private and home school families are more likely than the public school families to engage in any listed forms of civic participation. Up to 13% more private and home schoolers have given money to political causes and up to 15% more have voted in recent elections and telephoned elected officials. An amazing 26% more private and home school families are members of community groups and volunteer at local organizations. (Smith & Sikkink, 1999, pp. 16-20)

The researchers conclude that home schoolers and private schoolers are "definitely not the isolated recluses that critics suggest they might be. It is rather the public schooling families that are clearly the least civicly involved of all the schooling types." Smith and Sikkink state:

> The empirical evidence is clear and decisive: private schoolers and home schoolers are considerably more involved in the public square than are public schoolers—even when the effects of differences in education, income, and other related factors are removed from the equation. Indeed, we have reason to believe that the organizations and practices involved in private and home schooling, in themselves,

[13] This section is taken, in large part, from Chris Klicka's "Home-School Families: Involved or Isolated?" from *Private School Monitor*, Vol. 20, No., 3, p. 9 (1999).

> tend to foster public participation in civic affairs . . . the challenges, responsibilities, and practices that private schooling and home education normally entail for their participants may actually help reinvigorate America's civic culture and the participation of our citizens in our public square." (Smith & Sikkink, 1999, p. 18)

Smith and Sikkink ponder the surprising civic lifestyle of home schoolers. Their comments explain a great deal about the success of the home school movement:

> Of all types of nonpublic education, home schooling as a practice—by so closely uniting home, family, education, and (usually) religious faith—might seem the most privatized and isolated from the concerns of the public sphere. But in fact, most home schoolers are not at all isolated. Indeed, most are embedded in dense relational networks of home schooling families; participate in local, state, regional, and national home schooling organizations; and engage in a variety of community activities and programs that serve the education of their children. Home schooling families meet together at playgrounds; frequent local libraries, museums, and zoos; organize drama productions, science projects, and art workshops; enroll their kids in YMCA soccer and swimming classes; organize home school association picnics and cookouts; and much more. Home schooling families also frequent home education conferences and seminars; pay close attention to education-related legislative issues; share political information with each other; and educate themselves about relevant legal concerns. Far from being privatized and isolated, home schooling families are typically very well networked and quite civically active. (Smith & Sikkink, 1999, p. 20)

Even one active citizen can make a difference in his or her own community. Seventy thousand families' worth of activists can make a difference nationwide. The Home School Legal Defense Association unites these unusually effective citizen-activists into a force to be reckoned with. As the United States Congress discovered during H.R. 6, a scattered but committed minority can be extraordinarily effective in this age of electronic communications.

C. Strength in Diversity

Kathy Collins, the attorney who used to supervise home education in Iowa, wrote home schoolers off as Christian fundamentalists. Ms. Collins was wrong. The diversity of home schoolers is a great strength of the home school movement.

The increasing popularity and acceptability of home education has given it a foothold in some communities that might otherwise have never considered it. The first wave of home schoolers was far to the left of the American political spectrum, and the second wave of evangelical home schoolers was well to the right. The new waves of the home school movement are rapidly filling in the vital center of American politics. Each new wave makes it harder for politicians to take away the right to teach a child at home.

Diversity is especially useful when home schoolers interact with legislators. There are home schoolers who are very comfortable with the most conservative politicians, and others who are equally at home with the most liberal. When home school freedoms are genuinely threatened, every faction of this diverse community will quickly join together to fend off government control of home education.

Legislators must remember the diversity of home education when they consider how (or whether) to regulate it. A legislative proposal might be perfectly acceptable to most home schoolers, yet fundamentally violate the deepest convictions of others. Dr. Mary Hood, a home schooler herself, dealt with this issue in her doctoral dissertation:

> [I]t is important for policy-makers to recognize that no single individual, group or organization, either on a local or a national level, can possibly hope to represent the views of all home educators adequately. Whenever policy decisions are made, it is important to include representatives of the homeschool movement in the planning process in order to ensure that decisions are fair and plans are feasible. However, the views of minorities should be given consideration and the concerns of those individuals or groups who are most noticeable or vocal in a given area should not be allowed to dominate the discussion completely. (Hood, 1991, p. 3)

Diversity makes a huge difference in the way the media report on home schooling. If home educators were uniformly conservative Republicans, many in the press would have been quick to label them part of the "vast right wing conspiracy." But any reporter who has ever actually covered home schoolers knows this just isn't true. Home schoolers come in too many different flavors to be stuffed in one box.

VIII. Conclusion

Home schooling is the movement that should not have happened, yet somehow ordinary parents have overcome the combined barriers of compulsory attendance laws, social disapproval, and a hostile teacher's union. This could never have happened if home schoolers had all been cut from the same cloth. Any movement capable of uniting Marxist teachers and fundamentalist lawyers is probably destined to be a smashing success or a startling failure. Home schooling managed to succeed.

Home schoolers value this freedom and aim to keep it. In the immortal words of the Preamble to the United States Constitution, we intend to "secure the blessings of Liberty to ourselves and our Posterity." Home schoolers would not quit unless they were put in jail. As Mohatma Gandhi and Martin Luther King, Jr. knew, Western democracies lack the will to punish honest people with good motives. A totalitarian state can stamp out home education. A free people will not.

Western democracies lack the will to punish, but do not lack the will to regulate. The most remarkable thing about the modern home school movement is that it is still so unregulated. Almost 2% of America's school-aged population is now taught at home by uncertified parents, free of any day-to-day government control of content or method. As long as the National Education Association continues to resolve to abolish home schooling, home schoolers view *any* regulation as the first of a thousand cuts. *Any* possible restriction on home schooling, from the ambiguous language of H.R. 6 to the development of a national test, will be met with fierce resistance from well-organized home schoolers.

Home schoolers still practice the politics of survival. Many still see themselves as a micro-minority, fighting to maintain a way of life in a society that may tolerate them today but could turn on them at any moment. Politicians respect groups that successfully fight for the rights of a discrete and insular minority. No candidate seeking national office would ever intentionally irritate the Jewish Anti-Defamation League, for example. Home schoolers have not earned that kind of respect—at least, not yet.

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